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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ODILON BOTELLO GODINEZ,

Defendant and Appellant.

F055631

(Super. Ct. No. PCF178427A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

Kieran D.C. Manjarrez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* Before Wiseman, Acting P.J., Levy, J. and Gomes, J.

STATEMENT OF THE CASE

On December 13, 2007, the Tulare County District Attorney filed an information in superior court charging appellant Odilon Botello Godinez and codefendant Rosario Godinez¹ as follows:

Count 1--unlawful transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) while personally armed with a firearm (Pen. Code, § 12022, subd. (c));

Count 2--unlawful possession of methamphetamine for sale (Health & Saf. Code, § 11378) while personally armed with a firearm (Pen. Code, § 12022, subd. (c));

Counts 3 and 4--possession of an assault weapon (Pen. Code, § 12280, subd. (b));

Count 5--child abuse (Pen. Code, § 273a, subd. (a));

Count 6--receiving stolen property (Pen. Code, § 496, subd. (a)) while a principal was armed with a firearm (Pen. Code, § 12022, subd. (a)(1)); and

Count 7--misdemeanor possession of a device for smoking a controlled substance (Health & Saf. Code, § 11364, subd. (a)(1)) (appellant only).

On December 20, 2007, appellant was arraigned, pleaded not guilty to the substantive counts, and denied the special allegations.

On April 28, 2008, jury trial commenced.

On April 30, 2008, the court dismissed count 4 on motion of the district attorney.

On May 1, 2008, the jury returned verdicts finding appellant guilty of the charged offenses and finding the special allegations to be true.

On May 23, 2008, the probation officer filed a report and recommendation as to appellant's sentencing.

On June 5, 2008, the court denied appellant probation and sentenced him to a total term of nine years, eight months in state prison. The court imposed the middle term of

¹ Codefendant Rosario Godinez, appellant's spouse, is not a party to the instant appeal.

two years on count 2, with a consecutive term of four years for the special allegation; a consecutive term of one year on count 1; consecutive terms of eight months on counts 3 and 6; a consecutive term of 16 months on count 5; and a consecutive term of 30 days on count 7. The court awarded 56 days of custody credits, imposed a \$10,000 restitution fine (Pen. Code, § 1202.4, subd. (b)), and imposed and suspended a second such fine pending successful completion of parole (Pen. Code, § 1202.45).

On July 1, 2008, appellant filed a timely notice of appeal.

STATEMENT OF FACTS

The following facts are taken from the report and recommendation of the probation officer filed June 5, 2008:

“Reports of the Lindsay Police Department indicate that on[] December 6, 2006 at about 5:40 p.m., officers on patrol observed the defendant driving [a] 1998 Ford pick up truck, which had damage to the rear bumper, obstructing the view of the third and fourth digits of the license plate. A traffic stop was [e]ffected, and officers recognized the passenger of the vehicle from past contacts as, Guadalupe Luna. As Miss Luna got out of the vehicle, officers observed a glass pipe in the passenger seat, where she had been seated. Miss Luna was detained. The officer asked the defendant to whom the pipe belonged, and he said it was not his. The defendant gave permission for a search, and officers found a small blue plastic bag containing methamphetamine in the coin pocket of his pants. Also in the coin pocket was a black plastic bindle containing methamphetamine and another small plastic bindle. The defendant asked why he was being arrested, so the officer showed him the three bindles. The defendant became upset and said he could not believe that ‘they’ had put that there. He explained that someone had put the bindles inside his pocket. The defendant then said that the officer had better check the left pocket of his flannel jacket, advising there was possibly something else there. In that pocket, officers found a blue paper towel which was wrapped around a glass pipe. The bowl of the pipe was coated with an off-white residue. An inventory search of the vehicle prior to towing revealed a small digital scale, behind the driver’s seat. [¶] . . . [¶]

“On December 7, 2006, at about half past midnight, officers responded to the defendant’s residence with a warrant. Upon arrival, they found the defendant’s wife, Rosario Godinez, standing in front of the front door. Officers found the defendant’s daughter sleeping in a bedroom. The

defendant's wife was questioned, and initially denied any knowledge of anything illegal inside the residence, stating that the defendant was a good husband. She said he was currently out of work, and officers advised her that . . . he had been arrested for possession of methamphetamine. The defendant's wife began crying, and the officer paused in his interview. A search of the residence located a large amount of narcotics, as well as currency, and several firearms inside the residence. The defendant's wife continued to cry, but stated that she knew about the drugs in the closet. She said that shortly after the defendant was let go from his job, about two months ago, she looked in the closet and saw items she thought were drugs. She said she never asked her husband about the drugs. The defendant's wife said that she was not employed, the defendant had not been employed for about two months, and that at his previous job he earned about \$20,000 a year. In a closet, officers found \$7,000 in United States currency in a black bag, which also contained a digital scale. Inside the bag was a plastic grocery type bag, containing other smaller plastic bindles. This tested positive for methamphetamine and weighed 28.6 g. A second bindle contained 7.7 g and a third bindle contained 4.5 g of methamphetamine, and a fourth contained marijuana. Several pieces of paper inside the bag were addressed to the defendant. Also in the closet, officers found a black purse containing \$7,000 in one hundred dollar denominations. A wallet was in the purse which contain[ed] \$100. Officers asked the defendant's wife how he had so much money if he only made \$20,000 a year, and she stated she believed he was making money by selling drugs. In the residence, officers found several brand new ornate doors, still in the wrappers. There were also chainsaws, blowers, weed eaters and other agricultural equipment. They asked Mrs. Godinez how the defendant afforded all of the items, and she said that people would come to the house and give them to him as 'gifts.' She was asked about the five motorcycles, trailer, and chemical sprayer in the backyard. She stated that she believed the husband had bought them. Officers questioned the defendant about the items found at his house. He said that he had located the drugs in the olive grove, but that the money belonged to him.

"In the corner of the kitchen, officers found an SKS assault rifle. In the northwest corner of the living room, were three rifle pieces; a shotgun with no barrel, a barrel with no stock, and a pellet rifle. In the closet area, officers found a .45 caliber Colt semi automatic handgun, with two magazines and one box of .45 caliber ammunition. In the closet area also was a Ruger Red over/under 28 gauge shotgun. In the kitchen, officers found two jars of MSM, a cutting agent which is frequently used to extend the amount of controlled substances. In the kitchen, officers found two boxes of Ziploc sandwich bags. Officers found a .17 caliber rifle in the closet area, along with an SKS Norinco assault rifle with a collapsible stock

and high-capacity banana-type magazine. In the kitchen, officers found a box of Winchester Super X ammunition. In a closet, officers found a black duffel bag containing a large amount of miscellaneous jewelry, 40 watches, 20 watch bands, 40 rings, 22 chains, six bracelets and 66 pieces of pendants, earrings and miscellaneous jewelry. In a filing cabinet in the living room of the residence, officers found a white electronic scale. Underneath the cushions of a couch, officers found a brown book bag with a blue gun box inside containing a .380 caliber semi-automatic pistol. In the bathroom, was a plastic bag containing a scale, a manual gram scale, glass pipes and more jewelry. In the bedroom where the defendant's six-year-old daughter was sleeping, under the mattress she had been sleeping on, was a .22 pistol, with magazine. The gun was not loaded, but officers found another magazine and ammunition in the same location. Several miscellaneous tools were found to have Burr Ranch identification. Barry Burr was contacted, and came to the residence. He reported that the defendant had worked for his family's business for years, and been terminated in October. He was able to identify a tool box, chain-saw and spray rig on a small trailer as his. Other items were identified as reported stolen, and were claimed by their owners.

"At the defendant's residence, officers found evidence that he had rented space at a storage facility at Mt. Whitney Storage. A search warrant was obtained for the storage facility, and officers entered and found several items of equipment, which had previously been reported stolen."

DISCUSSION

Appellant's appointed counsel has filed an opening brief which adequately summarizes the facts and adequately cites to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) By letter dated January 22, 2009, this court invited appellant to submit additional briefing and state any grounds of appeal he may wish this court to consider. Appellant has not done so.

Our independent review discloses no reasonably arguable appellate issues. "[A]n arguable issue on appeal consists of two elements. First, the issue must be one which, in counsel's professional opinion, is meritorious. That is not to say that the contention must necessarily achieve success. Rather, it must have a reasonable potential for success. Second, if successful, the issue must be such that, if resolved favorably to the appellant,

the result will either be a reversal or a modification of the judgment.” (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.)

DISPOSITION

The judgment is affirmed.